D. Inadmissibility of Tax-Motivated Former U.S. Citizens

1. The immigration provision

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibited individuals who renounce U.S. citizenship for purposes of avoiding taxation from entering the United States:

> Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.[292]

The immigration provision was introduced as an amendment to H.R. 2202, the Immigration in the National Interest Act of 1995, during a markup of the bill before the House Committee on the Judiciary. Then-Representative Jack Reed introduced the measure that would deem inadmissible to the United States former U.S. citizens who renounced their citizenship for purposes of tax avoidance. He stated:

> This legislation would simply state that if you [renounce your U.S. citizenship for purposes of tax avoidance], and there's no attempt by this legislation to prevent someone from renouncing their citizenship, you would not be able to return to the United States.[293]

An example of a wealthy individual who had renounced citizenship but desired to continue residing in the United States was used to illustrate the problem the amendment sought to address. It was noted that such individual had convinced a foreign government to appoint, or propose to appoint, the individual as a representative to the United States. In discussing the amendment, it was noted that "[t]he government of the United States should not reward those that renounce citizenship by granting them the privileges of residency."

Opponents criticized the measure on three grounds.[294] First, opponents found the amendment too punitive. Second, it was noted that it would be difficult to ascertain precisely why someone renounced citizenship. Finally, opponents believed the measure gave too much discretion to the Attorney General to determine whether the renunciation was for tax avoidance.

Despite this criticism, the amendment was approved by the House Committee on the Judiciary by a vote of 25 to 5 and ultimately became part of the Immigration and Nationality Act at section 212(a)(10)(E), 8 U.S.C sec. 1182(a)(10)(E).

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[292] Illegal Immigration Reform and Immigrant Responsibility Act, P.L. No. 104-208, Division C, sec. 352(a), 110 Stat. 3009-641 (1996).

[293] Federal Information Systems Corporation, Transcript 952970478, *Hearing of the House Judiciary Committee, Subject: Mark-Up of Immigration Legislation* (October 24, 1995).

[294] *Id.*

2. Attorney General access to return information

The immigration provision requires the Attorney General to determine whether a former citizen renounced his or her U.S. citizenship for tax avoidance purposes.[295] However, the ability of the Attorney General to access tax returns or return information for purposes of making this determination is limited under the Code. Section 6103 prohibits the disclosure of returns and return information unless an exception authorizing the disclosure is provided for in the Code. The willful unauthorized disclosure of a return or return information is a felony.[296] No explicit exception exists to facilitate the operation of the immigration provision without the Attorney General first obtaining the consent of the taxpayer whose information is being sought. Thus, even if the IRS made a determination that an individual's relinquishment of citizenship was tax-motivated, that information could not be shared with the Attorney General in the absence of the taxpayer's consent.

3. Availability of waivers

The immigration provision acts as an absolute bar to a former U.S. citizen's obtaining a green card. No waiver of inadmissibility is available for individuals seeking immigrant status.

Nonimmigrants, however, can seek a waiver of inadmissibility. Thus, the provision does not bar a tax-motivated former U.S. citizen from ever entering the United States. If a waiver can be obtained, such individual may enter the United States for a limited period of time per visit.

4. Effect of the immigration provision on admissibility

No former U.S citizens have been found inadmissible under section 212(a)(10)(E) of the INA since its enactment on September 30, 1996. The INS, Department of Justice, the Department of Treasury, the IRS, and the Department of State have been working to develop administrative guidelines and procedures regulations necessary to implement section 212(a)(10)(E) of the INA. This effort has been hampered by the lack of coordination among the various agencies.

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[295] Under the Homeland Security Act, this authority of the Attorney General will reside in the Department of Homeland Security.

[296] Sec. 7213(a).